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SEP 08 2010
OFFICE OF PETITIONS

In re Patent No. 7,709,134. :
Issued: May 4, 2010 :
Application No. 10/598,951 : PATENT TERM ADJUSTMENT
Filing or 371(c) Date: July 13, 2007 :
Dkt. No.: SLU 03-022 (4556.8) :

This is a decision on the petition filed June 25, 2010 requesting that the patent term adjustment for the above-identified patent be increased from zero days to 200 days. This matter is being properly treated pursuant to 37 CFR 1.705(d).

The petition is hereby **DISMISSED**.

The above-identified application matured into U.S. Pat. No. 7,709,134 on May 4, 2010. The patent issued with zero days of patent term adjustment. The instant request under 37 CFR 1.705(d) is timely filed. Patentee argues that the patent is entitled to an adjustment of 231 days pursuant to 37 CFR 1.702(b), less 31 days of applicant delay, yielding an overall patent term adjustment of 200 days.

The petition has been carefully considered, but is not persuasive. The instant patent is not entitled to any period adjustment for "B" delay because the instant patent issued less than three years after the date of commencement.

As stated, the "B" delay period is zero days. It is thought that perhaps patentees calculated this period based on the date this application fulfilled the requirements of 35 U.S.C. 371. However, in an international application, this period is based on the failure of the Office to issue a patent within three years after the national stage commenced under 35 U.S.C. 371(b) or (f). See, 1.702(b). The priority date of this application is March 15, 2004. The requirements for early commencement were not met; accordingly, the national stage commenced in this application on Friday, September 15, 2006.

The day after the date that is three years after the date of commencement would have been September 16, 2009. However, a request for continued examination was filed prior to that date on January 23, 2009, effecting cutting off the accrual of "B" delay because the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period. See, 35 U.S.C. 154(b)(1)(B)(i).

As to patentee's assertion that the applicant delay is 31 days, applicant is advised that in addition to the 31 days of applicant delay assessed per 37 CFR 1.704(b), there was an additional applicant

delay of 113 days in connection with the drawings filed post-allowance on January 12, 2010. Thus, in accordance with 37 CFR 1.704(c)(10), an applicant delay of 113 days is properly entered into the record. The delay commenced January 12, 2010, the date that the drawings were filed, and ended May 4, 2010, the date that the patent issued.

In view thereof, no adjustment to the patent term will be made.

Receipt is hereby acknowledged of the \$200.00 fee required per 37 CFR 1.18(e).

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

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